IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 1096 OF 1988

The State of Maharashtra,
through the Special Land
Acquisition Officer No.13,
Pune. ... Appellant.

Versus.

Bhanudas Maruti Kadakne,
R/o. Hingni Berdi, Taluka
Daund, Dist. Pune. ... Respondent.

ALONG WITH

FIRST APPEAL NO. 1097 OF 1988

The State of Maharashtra. ... Appellant.

Versus.

Dhondiba Sakharam Chavan,
(since deceased through his LRs.)
1. Nivrutti Dhondiba Chavan,
2. Popat Dhondiba Chavan,
3. Vitthal Dhondiba Chavan.
4. Ramdas Dhondiba Chavan,
5. Maruti Dhondiba Chavan,
deceased by his heirs,
5A.Sulochana Maruti Chavan,
All residents of Hingni-
Bordi, Taluka: Daund,
Dist. Pune. ... Respondents.

Shri K.K.Tated, A.G.P. for the Appellants.
None for the Respondents.

CORAM : ABHAY S.OKA, J.

DATED : 17th March, 2006.

ORAL JUDGMENT.

1. Heard the learned A.G.P. for the Appellants. None appears for the Respondents. These two Appeals can be conveniently disposed of by a common judgment. The facts of both the Appeals are more or less identical. The Judgments and Awards which are impugned in this Appeals have been passed by the Reference Court in a reference under section 28A(3) of the Land Acquisition Act, 1894 (herein after referred to as "the said Act").

2. The Respondents in the above appeals are the original claimants whose lands were acquired under the said Act. After declaration of the Award under section 11 of the said Act, the Respondents did not file any Application for reference under section 18 of the said Act. Subsequently the Respondents applied under section 28A(1) of the said Act for re-determination of the amount of compensation on the basis of the award passed by the Reference Court in the Land Reference No.248 of 1983 and the other connected Land References. It appears that the Application of the Respondents under section 28A(1) of the said Act was rejected by the Special Land Acquisition Officer on the ground that the applications were barred by limitation. The ground on which the Applications were rejected was that prior to

26th April 1985 i.e. the date on which the Award wasmade in Land Acquisition Reference No.248 of 1983, another reference being Land Acquisition Reference No.329 of 1982 in respect of another land which was notified for acquisition under the same notification under section 4 of the said Act was decided on 30th April 1983 and the Respondents ought to have filed application under section 28A(1) within a period of three months from 30th April 1983. Aggrieved by the Award of the Special Land Acquisition Officer of refusing to re-determine the amount of compensation, applications were made by the Claimants under sub-section (3) of section 28A for reference. By the impugned Judgments and Awards the references made on the basis of the said applications have been allowed and the compensation payable to the Respondents has been enhanced on the basis of the subsequent awards passed by the Reference Court in Land Acquisition Reference No.248 of 1983.

3. Shri Tated, the learned A.G.P. appearing for the Appellants submitted that there are conflicting decisions of different Benches of the Apex Court on the issue. He submitted that there are decisions of the Apex Court which hold that the limitation of three months provided by section 28A(1) will have to be

computed from the date of the earliest award which is made in respect of other lands covered by the same notification under section 4. He submitted that each successive award cannot give cause of action for filing an Application under section 28A(1) and the cause action arises only on the basis of the Award which is earliest in point of time. He pointed out that the question whether application under section 28A(1) can be filed within a period of three months from the date of any Award or from the date of the earliest award is pending before the larger Bench of the Apex Court. Shri Tated further pointed out that the limitation is required to be computed from the date of the earliest award which is dated 30th April 1983 and from that date if the limitation is computed, the Applications under section 28A(1) made by the Respondents were barred by limitation. He has invited my attention to the various decisions of the Apex Court on this question.

4. I have considered the submissions. In a decision of the Apex Court reported in (1995) 2 SCC 689 (Babua Ram v/s. State of U.P.) a Bench consisting of two Hon'ble Judges held that the limitation prescribed in section 28A(1) will have to be computed from the date of the award which is the earliest award in point of time and the claimant has no choice to apply on the

basis of subsequent Award. It was held that successive awards cannot save the limitation. In another decision of the Apex Court reported in (1995) 2 SCC page 736 (Union of India v/s. Pradeep Kumari) a Bench of the Apex Court consisting of three Hon'ble Judges over-ruled the earlier decision of the Apex Court in the case of Babua Ram (supra). The Apex Court held that the benefit of re-determination can be availed of on the basis of any one of the awards made by the Court after coming into force of section 28A and right to apply for re-determination was not confined to the earliest award made by the Court. In paragraph 10, the Apex Court held thus:

> . "By restricting the benefit of Section 28-A to the first award that is made by the court after the coming into force of Section 28-A the benefit of the said provision would be confined to redetermination of compensation on the basis of lesser amount of compensation awarded under the first award that is made after the coming into force of Section 28-A. There is nothing in the wordings of Section 28-A to indicate that the legislature intended to confer such a limited benefit under Section 28-A."

5. A Bench of the Apex Court consisting of two Hon'ble Judges dealt with the said issue in a case reported in (1996) 1 SCC page 88 (Jose Antonio Cruz Dos R.Rodriques v/s. Land Acquisition Collector). The Apex Court after referring to the decision of the larger Bench in the case of Pradeep Kumari (supra) came to the conclusion that the question involved needs to be considered by a larger Bench of five Judges. Paragraphs 4 and 5 of the said decision read thus:

> "4. In view of the contention raised by Shri Mehta, the following questions are required to be considered.
>
> 1. Whether the award of the Court, i.e. civil court made under section 26 on reference under section 18 would also include judgment and decree of the appellate court under section 54?
> 2. Whether each successive award or judgment and decree (if answer to Question No.1 is positive) would give cause of action to file application under section 28-A; if so construed, does not such a construction violate the

language used in section 28-A when Parliament advisedly did not use such expression?

5. These questions require examination by a larger Bench of five Judges as the interpretation of section 28-A on the limitation of three months often arises in many a case throughout the country."

It appears that on the basis of the said order, a larger Bench of Five Judges was not constituted and the matter was placed before a Bench of three Judges. The Bench of Three Judges of the Apex Court in a decision reported in (1996) 6 SCC page 746 decided only the question No.1. While dealing with the Question No.2, the Apex Court observed that the three Judge Bench in Pradeep Kumari's case has already decided the issue by departing from the view taken by the bench consisting of two Judges. The Apex Court observed that as and when the question arises in appropriate case, a reference to a Five Judge Bench may be necessary.

6. In another decision of the Apex Court which was delivered by a Bench consisting of two Hon'ble Judges reported in (2001) 4 SCC page 404 (Union of India and

others v/s. Hansoli Devi and others), the Apex Court in paragraphs 8 and 9 held as under:

> "8. The questions having the backdrop of the incidents and the state of law thus were required to be examined by a larger Bench of five Judges as to the proper interpretation of section 28-A of the issue of limitation. Similar is the situation presently before us and having regard to the issue involved herein we also feel it expedient to record that such a pronouncement of a larger Bench is required to be made on the issue pertaining to limitation in so far as section 28-A of the Land Acquisition Act (as amended) is concerned. In the normal course of events we would have framed certain questions for determination but since the issue such as fairly elaborated in the two questions noted in Jose Antonio decision we do not feel it expedient to introduce further questions since answer to the same would resolve the principal disputes in most of these matters placed before this Bench excepting, however, in two matters (BBMB Punjab v. Sita Devi and BBMB, Punjab v. Basu Dev) wherein Mr.Dhurv Mehta, learned advocate

appearing in support of the petitions raised the following two questions which we also feel it expedient to record herein for the benefit of adjudication by the larger Bench, the questions being:

. "1. (a) Whether dismissal of an application seeking reference under section 18 on the ground of delay amounts to 'not filing an application' within the meaning of section 28-A of the Land Acquisition Act, 1894?

. (b) Whether a person whose application under section 18 of the Land Acquisition Act, 1894 is dismissed on the ground of delay or any other technical ground is entitled to maintain an application under section 28-A of the Land Acquisition Act ?

. 2. Whether a person who has received the compensation without protest pursuant to the award of the Land Acquisition Collector and has not filed an application seeking reference under section 18 is 'a person aggrieved' within the meaning of section 28-A?

9. Though various other suggestions have come forth from the Bar but the questions noticed in Jose Antonio decision in our view

would otherwise cover the field for which difficulties are being experienced as noticed hereinbefore."

In view of the said decision, it appears that the matter was placed before a Bench of five Hon'ble Judges. The decision of the said Bench is reported in (2002) 7 SCC page 273 (Union of India and another v/s. Hansoli Devi and others). The Bench decided other issues which are not relevant for consideration in this matter. It is pertinent to note that before the larger bench a contention was raised by the learned Solicitor General of India appearing for the Union of India that the decision of a Bench consisting of three Hon'ble Judges in the case of Union of India v/s. Pradeep Kumari (supra) is not correct. In paragraph 12 the Apex Court dealt with the said submission of the learned Solicitor General of India which reads thus:

"12. So far as the argument of learned Solicitor General on the correctness of Pradeep Kumari case is concerned, it may be stated that the said question does not appear to be a question, which has been referred to his Constitution Bench. **As has been stated earlier, that question had been referred by a**

> **Bench of two learned Judges in Jose Antonio Cruz case as question 2, but a Bench of three learned Judges in Jose Antonio while answered the first question, did not think it necessary to answer the second question, even though some doubts were raised about the correctness of the three Judge Bench decision in Pradeep Kumari case. But since that question was neither been referred to us under the order of reference made in the present case nor does it arise in the case in hand, we refrain from answering the same."** (Emphasis supplied).

It is thus obvious that the Apex Court declined to decide the said submission made by the learned Solicitor General of India as the question was not referred to the Bench.

7. Thus the only conclusion which can be reached is that the law laid down by the Apex Court in the decision of Union of India v/s. Pradeep Kumari (supra) still holds the field. This issue again came up for consideration in a recent decision of the Apex Court in the case of State of Tripura v/s. Roopchand Das [(2003) 1 SCC page 421]. In paragraph 6 of the said decision, the Apex Court noted that the issue of correctness of

the decision in Union of India v/s. Pradeep Kumari was sought to be raised before the Constitution Bench in the case of Union of India v/s. Hansoli Devi and others and the Constitution Bench declined to consider the said issue. The Apex Court further noted that a review petition was filed before the Constitution Bench which also came to be dismissed. The Apex Court in the said case of State of Tripura (supra) followed the law laid down in the earlier decision in the case of Union of India v/s. Pradeep Kumari (supra).

8. In view of this clear position which emerges from the aforesaid discussion, it is obvious that the decision of the Apex Court in the case of Union of India v/s. Pradeep Kumari (supra) still holds the field. Thus the contention of Shri Tated that the period of limitation for filing an Application under section 28A(1) has to be computed from the Award which is earliest in point of time cannot be accepted.

9. Thus it is not possible to find fault with the view taken by the Reference Court in the impugned Judgments and Awards. There is no merit in the Appeals and the same are dismissed. No order as to costs.

Judge.